

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

### May/June 2003



#### The Federal 0.08 BAC Requirement and the Potential Loss of Highway Funding by Craig Thiel, Fiscal Analyst

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##### Introduction

Nationally, the number of people killed in motor vehicle accidents in 2000 reached 41,821. Alcohol use was involved in 16,653 of these incidents. Although only about 8% of all fatal and non fatal motor vehicle crashes involved alcohol, alcohol was a factor in 40% of all fatal crashes. The related statistics in Michigan are comparable. In 2000, there were 1,382 people killed in motor vehicle accidents in Michigan. Alcohol was involved in almost 37% of these crashes. According to national statistics, alcohol-related fatalities have dropped significantly over the 10-year period 1990 to 2000; however, alcohol remains the most important factor in motor vehicle fatalities and injuries. Various measures have been implemented to address the problem of impaired driving, including stronger, more effective laws, stepped-up enforcement, and public education and outreach. In the arena of stronger, more effective laws, considerable attention has been given by the states to 0.08 percent blood alcohol concentration (0.08 BAC) laws. Currently, 33 states are enforcing laws that make operating a motor vehicle with a BAC of 0.08 percent or greater a “*per se*” offense of driving while intoxicated or an equivalent “*per se*” offense.<sup>1</sup>

The fiscal year (FY) 2000-01 United States Department of Transportation (DOT) Appropriations Act requires the withholding of Federal-aid highway funds, beginning in FY 2003-04, from any state that has not enacted and is not enforcing a 0.08 BAC *per se* law. Under Michigan law, the threshold for driving while intoxicated is a BAC of 0.10 percent or greater.<sup>2</sup> Based on FY 2002-03 Federal-aid highway apportionments, Michigan would lose \$9.0 million of the Federal funds apportioned to it in FY 2003-04 for its failure to enact a 0.08 BAC *per se* law by September 30, 2003. The Federal sanction rate increases 2% per year, beginning with 2% in FY 2003-04 and increasing to 8% in FY 2006-07, when the sanction amount would total about \$36.7 million in Michigan.

Legislation has been introduced in the Michigan House of Representatives (House Bills 4247 and 4248) to address the issue of driving while intoxicated and to reduce the threshold for driving while intoxicated from 0.10 BAC to 0.08 BAC.<sup>3</sup> It is unknown at this time whether the proposed legislation would satisfy the Federal requirements and relieve the State of the potential sanctions. This article does not attempt to address that issue. Rather, the intent here is to describe the background and potential fiscal impact on Michigan of the Federal 0.08 BAC requirement contained in the FY 2000-01 U.S. DOT budget.

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<sup>1</sup> A 0.08 BAC “*per se*” offense of driving while intoxicated makes operating a motor vehicle with a BAC of 0.08 percent or above, in and of itself, an offense.

<sup>2</sup> The Michigan Vehicle Code considers a person to be “operating a vehicle while intoxicated” if they have a bodily alcohol content of 0.10 grams or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.

<sup>3</sup> A Senate Fiscal Agency summary of House Bills 4247 and 4248 as they passed the House, is available on the Agency’s website: [www.senate.michigan.gov/sfa/](http://www.senate.michigan.gov/sfa/)



## Background

The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), enacted in June 1998, established a \$500 million incentive grant program under 23 U.S.C. 163 to encourage states to adopt tough 0.08 BAC laws. Section 1404 of TEA-21 established the incentive grant program to allow the U.S. Secretary of Transportation to make a grant to any state that has enacted and is enforcing a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the state is deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. Under TEA-21, the amount available each year for the grants increased. States with 0.08 BAC *per se* laws share in the total amount available each year. States may use the incentive grants for any purpose eligible under Title 23 of the U.S. Code. As a result of its current statute governing the driving while intoxicated offense, Michigan has not received any of the Federal incentive grant funding.

Before the Section 163 grant program existed, 16 states had enacted 0.08 BAC *per se* laws. Between 1998 and October 2000, only two additional states enacted and began enforcing 0.08 BAC *per se* laws. Although some progress was made with respect to reducing drunk driving between 1998 and 2000, in 2000 the United States Congress added a “stick” to the established “carrot” to address the 0.08 BAC *per se* law issue. Specifically, Section 351 of the FY 2000-01 U.S. DOT budget included a provision under which the Federal government will withhold a portion of a state’s Federal-aid highway funds if the state fails to enact a 0.08 BAC *per se* law by September 30, 2003. Section 351 did not affect the Section 163 incentive grant program, which will continue until TEA-21 expires (September 30, 2003).

## Federal 0.08 BAC Sanctions

Under Section 351, beginning in FY 2003-04, a state will lose 2% of its Federal-aid highway apportionments under the National Highway System, the Surface Transportation Program, and the Interstate Maintenance programs if it fails to enact a 0.08 BAC *per se* law by the deadline.<sup>4</sup> The amount withheld will increase by 2% each year, until it reaches 8% in FY 2006-7. Section 351 also provides that if a state enacts a 0.08 BAC *per se* law before FY 2006-07, it will be eligible for a reimbursement for any Federal funding withheld. Section 351 further provides that if a state is not in compliance with Section 163 on October 1, 2007, any funds withheld will begin to lapse and no longer be available for apportionment. For example, in FY 2007-08, the 2% withheld in FY 2003-04 would lapse.

In order to avoid the withholding of Federal apportionments, a state must certify to the U.S. Secretary of Transportation that its 0.08 BAC *per se* law meets all the requirements of Section 163, as follows:

- 1) Applies to all people with no exceptions.
- 2) Sets a level of no more than 0.08% as the legal limit for BAC while operating a vehicle.

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<sup>4</sup> States receive Federal-aid highway funds in various program categories based on Federal criteria established in multiyear authorization bills, such as TEA-21.

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- 3) Makes operating a vehicle with a BAC of 0.08% or above a “*per se*” offense of driving while intoxicated. (In other words, states must establish a law that makes operating a vehicle with a BAC of 0.08% or above, in and of itself, a violation.)
- 4) Provides for primary enforcement of the law.
- 5) Provides for the 0.08 BAC *per se* law in the state’s criminal code and in its administrative license suspension law, if the state has one.
- 6) Makes it equivalent to the state’s standard driving while intoxicated offense.

Today, 38 states, plus the District of Columbia and Puerto Rico, have adopted 0.08 BAC *per se* laws that meet the Section 163 requirements. All other states, except Massachusetts, have established 0.10 BAC as the legal limit for driving while intoxicated. In Michigan, a person operating a vehicle with a BAC of 0.07% but below 0.10% is presumed impaired, but this does not constitute a *per se* offense of driving while intoxicated for the purposes of Section 163.

### **Fiscal Impact**

Michigan will be subject to the Section 351 sanctions of the FY 2000-01 U.S. DOT budget if it is unable to certify to the U.S. Secretary of Transportation that it has enacted and is enforcing a 0.08 BAC *per se* law by September 30, 2003. These sanctions will begin to apply with the State’s FY 2003-04 Federal apportionments for the Surface Transportation Program, National Highway System, and Interstate Maintenance programs. Below is a table of the fiscal impact on Michigan of the Federal 0.08 BAC sanctions based on FY 2002-03 apportionments for Surface Transportation Program (\$195,166,132), National Highway System (\$140,896,093), and Interstate Maintenance (\$116,078,531). (It is worth noting that TEA-21 is scheduled to expire at the end of the current fiscal year; therefore, FY 2003-04 apportionment levels may vary considerably under new Federal transportation authorization legislation.)

**Table 1**

<b>Michigan’s Potential Federal-Aid Sanctions Under the 0.08 BAC Requirement</b>			
<b>Fiscal Year</b>	<b>Sanction</b>	<b>Sanction Amount</b>	<b>Lapse</b>
2003-04	2%	\$9,042,815	
2004-05	4%	\$18,085,630	
2005-06	6%	\$27,128,445	
2006-07	8%	\$36,171,260	
2007-08	8%	\$36,171,260	2% withheld in FY 2004

The FY 2003-04 Michigan Department of Transportation budget proposed by the Governor and the version of the budget passed by the Senate (Senate Bill 265 (S-1)) do not recognize these sanctions. Should the sanctions occur, appropriate changes will have to be made to the Federal funding included in the budget.

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#### **Annexation and Detachment In Michigan** **by George Towne, Legislative Analyst**

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All property in Michigan is located in a local unit of government. Local units of government include cities, villages, home rule villages, townships, and charter townships, all of which lie within the State's 83 counties. While county boundaries are permanently fixed, the boundaries of local units may be changed by annexation or detachment. Annexation is the process of transferring land from one jurisdiction to another, by petition or resolution. Detachment is the rarely used process by which a township reclaims property that was formerly annexed from it.

Local units are legally organized under various statutes. Cities operate under the Home Rule City Act; home rule villages under the Home Rule Village Act; general law villages under the General Law Village Act; general law townships under Revised Statute 16 of 1846; and charter townships under the Charter Township Act. Each of these statutes contains provisions regarding annexation. Specific procedures for annexation vary according to the type of local unit attempting to annex territory, and the type of local unit whose territory is proposed for annexation.

Early in its history, the State was divided into townships that were roughly 36 square miles each. Cities were incorporated as the population grew and became denser in certain areas, thus removing land from the jurisdiction of townships. Villages also developed, although a village is not completely removed from township jurisdiction because village residents pay both village and township property taxes. Once incorporated, a city or village must annex surrounding territory in order to expand. (This territory is usually governed by a township or charter township, although annexation can occur from one township to another, from one village to another, or from a village to a city.)

A city may annex land from a township by entering into an agreement with the township governing body. Often, however, agreements are not reached and a city may attempt to annex township property without the township's consent. In such situations, the State Boundary Commission governs the annexation process. Requests for annexation may be brought to the Commission through one of four types of petitions: by resolution of a city council; by the owners of at least 75% of the land proposed for annexation; by at least 20% of the registered voters residing in the territory proposed for annexation; or by at least 1% of the property owners in the affected township and city.

Upon receiving a petition, the Commission must hold various hearings to determine if the petition is legally sufficient, and to hear from interested parties. If the Commission decides to approve the annexation, it forwards its recommendation to the Director of the Department of Consumer and Industry Services (DCIS) for a final decision. If the Director signs the order of annexation, public officials or residents may challenge the decision by a referendum election or judicial review. A circuit court judge has the authority to overturn an order of the DCIS Director. A request for referendum must be filed by petition to the Commission within 30 days after the Director's approval of the annexation. (A referendum is called if at least 25% of the registered voters residing in the area proposed for annexation, in the annexing city, or in the balance of the township sign the petition to call a referendum.) If a referendum is held, the annexation is approved only if a majority of the electors in the area to be annexed, the balance of the township,



and the city, voting separately, vote in favor of the annexation. A referendum is permitted only if the area to be annexed had a population of 100 or more on the date the petition was filed.

In some areas of the State, annexation disputes have caused great acrimony. While many city officials may believe that the only way to grow, and expand their tax base, is to annex nearby territory, some township officials might feel that their land, and their tax base, is being stolen by a predatory city. In the past, there have been instances in which a township has worked hard to establish a sound revenue base by fostering industrial and commercial development, only to have a neighboring city annex the development. In addition to leaving the township and its taxpayers to deal with the loss of territory and revenue, these annexations can cause such negativity that there is little chance the city and township will work cooperatively in the future. In some cases, by drawing proposed annexation boundaries to exclude residents, cities have been resourceful at annexing open township land, because there is no right to referendum on the annexation of an area that has fewer than 100 residents. Recently, some townships have initiated successful detachment efforts and reclaimed previously annexed territory.

Some people complain that the current situation favors developers. If a developer who owns township land that borders a city thinks that it would be advantageous to be part of the city (for water and sewer services, for instance), often there is little the township can do to prevent the annexation. For example, a developer who owns vacant or sparsely populated property asks the adjacent city to annex his or her property. The city can attempt to strike an agreement with the township, or it can bypass the township and file an annexation petition with the State Boundary Commission, on the basis that the owner of at least 75% of the land proposed for annexation has requested that it be annexed. If the Commission approves the proposal, the township cannot file a petition for referendum because the area proposed for annexation has fewer than 100 residents.

Many people believe that the current annexation and detachment process fosters feuds among local units and discourages local and regional cooperation. The Michigan Senate recently passed a package of bills that would address this issue (Senate Bills 379 through 384). These bills are similar to proposals that the House passed last year (House Bills 4720 through 4725), and to House bills introduced this year (House Bills 4527 through 4532). The Senate bills would amend various statutory provisions regarding the annexation and detachment of city, village, township, or charter township territory. Among other things, the bills would do the following:

- Prescribe procedures, including a referendum, for the annexation of territory in which there were 100 or fewer residents.
- Provide for negotiated annexation agreements.
- Revise procedures for the annexation of territory that has no residents.
- Revise provisions for the annexation of city-owned territory in a township.
- Require that certain conditions be met for the detachment of territory.
- Provide for a referendum on the annexation of township territory by a city or village.

(Detailed information on the bills is available at <http://michiganlegislature.org> or [www.michigan.gov/cis](http://www.michigan.gov/cis).)



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#### **What is Deflation and Why is it so Bad?** **By Jay Wortley, Senior Economist**

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For many years, the Federal Reserve's primary goal has been to maintain a sustainable rate of economic growth and keep inflation low and stable. At the Federal Reserve's Federal Open Market Committee (FOMC) meeting, held May 5-6, 2003, the inflation component of this goal was altered. Given the current very low level of inflation and the sluggish level of economic activity, the Federal Reserve is turning its focus away from keeping inflation low to keeping deflation from developing. This shift in the Federal Reserve's focus was evident in the FOMC's press release following its May meeting, which stated, "...the probability of an unwelcome substantial fall in inflation, though minor, exceeds that of a pickup in inflation from its already low level." This statement was essentially reissued following the FOMC's subsequent meeting on June 24-25, 2003. While the Federal Reserve did not specifically use the word "deflation", a "substantial fall in inflation" when inflation is already at a very low level, can only mean deflation.

#### **What Is Deflation and Where Does It Come From?**

Deflation is defined as a general ongoing decline in prices. Deflation is not present when prices fall only for a key commodity, such as oil, or in a particular sector, such as housing or motor vehicles. Deflation occurs only when the overall level of prices for goods and services is on a downward trend. Therefore, deflation is the opposite of inflation. Under inflation, prices in general are increasing and the Consumer Price Index (CPI) edges up. Under deflation, prices in general are declining and the CPI edges down.

Deflation has two main causes. First, deflation can be caused by weak economic activity. When demand for goods and services declines relative to the amount of goods and services being supplied, businesses react by reducing their prices in an attempt to increase their sales. Deflation occurs when such a price-cutting environment is widespread throughout the economy. Second, deflation can result from tight monetary policy. If the Federal Reserve allows the money supply to grow more slowly than the rate of growth in the demand for goods and services, then fewer dollars are available to spend on goods and services, and businesses lower their prices to help stimulate their sales. A short-run deflationary problem is typically caused by weak economic activity, whereas a more long-term deflationary problem tends to be due to monetary policy.

#### **Deflation in the Past**

As measured by the U.S. Consumer Price Index, which measures changes in retail prices of consumer goods and services, the U.S. economy has experienced an actual decline in the general level of prices from one year to the next only 12 times in the past 90 years. The nation's most serious bout with deflation occurred during the Great Depression, from 1930 to 1933, when overall consumer prices fell 24.0%. The last time prices fell on an annual basis was in 1955, when the U.S. CPI declined a modest 0.4%.



### **Why is Deflation Bad?**

Deflation is undesirable because it tends to occur when economic activity is already weak and it will likely lead to even weaker economic times. Initially, some consumers may benefit from deflation because the goods and services they want and need become less expensive. However, this drop in prices can exacerbate economic conditions if the downward movement in prices persists. For example, if prices are falling, it means not only that goods are less expensive today compared with yesterday, but also that goods will cost even less tomorrow than they cost today. As a result, deflation produces the incentive for consumers and businesses to postpone purchases as long as possible. This postponement of purchases will cause economic activity to weaken even further.

Another negative offshoot of deflation is that debt burdens become more onerous. Under deflation, the decline in prices causes the purchasing power of a dollar to increase. As a result, debt incurred in the past is repaid with dollars that are worth more than when the debt was initially incurred, so debt holders will have to spend more in real terms to repay their debts. For example, if general prices decline by 5.0%, a homeowner's fixed monthly mortgage payment of \$1,000, will increase \$50 to \$1,050 in real terms, or \$600 for a full year. This increase in the real debt burden becomes even more troublesome if the homeowner's nominal income also declines due to a reduction in hours worked, a direct pay cut, or the loss of a job, all of which might be prevalent during the poor economic times that typically accompany a deflationary period. Business debt is affected in the same way. This increase in real debt levels is likely to cause increased personal and business bankruptcies, which will create problems for the nation's financial system and further undercut economic activity.

### **Actions To Prevent Deflation**

To stop deflation from developing, the demand for goods and services must increase relative to the supply of goods and services. This can be accomplished using monetary and fiscal policy actions. The Federal Reserve can help stimulate demand for goods and services by reducing interest rates, which makes it less expensive for consumers and businesses to finance the purchase of consumer goods and business equipment. Given the Federal Reserve's cuts in interest rates during the past two years, including the reduction in the Federal Funds rate from 1.25% to 1.00% on June 25, 2003, the ability of the Federal Reserve to reduce interest rates much further is very limited because they are already at very low levels. However, the Federal Reserve still can help stimulate demand by buying government bonds. When the Federal Reserve buys Federal government bonds, it helps boost the money supply, which helps keep prices from declining. The Federal government also can help boost demand and keep prices from edging down by cutting taxes and/or increasing spending.

### **Is The U.S. Economy Headed Toward Deflation?**

Due to the fact that the level of economic growth is fairly weak at the present time, combined with the fact that inflation is very low, deflation is a real possibility. However, the probability of deflation becoming a serious problem for the U.S. economy is very small for basically four reasons. First, the consensus economic forecast is that economic activity will start to show

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meaningful improvement by the end of 2003. If this forecast is correct, the demand for goods and services should increase, which will help bolster prices and head off any potential deflationary problem. Second, recent monetary and fiscal policy actions by the Federal government, which include the recent interest rate reduction, income tax reduction, and spending increases, also will help stimulate demand and therefore undercut deflation. Third, recent international monetary shifts should help relieve some of the downward pressure on U.S. prices. The value of the dollar has been edging down relative to the value of foreign currencies. As a result, the prices of goods being imported into the U.S. have been increasing and the prices of U.S. goods being exported to other countries have been decreasing. This shift in currency valuations will ease some of the downward price pressure on U.S. domestic businesses and help improve their profitability. This also should help stimulate economic activity and head off deflation. Fourth, the Federal Reserve is doing its job. Alan Greenspan, Chairman of the Federal Reserve, and the other members of the FOMC, have identified deflation as a potential problem and are poised to take the necessary actions to help keep deflation from even starting.